

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVATION: 18.03.2015
DATE OF PRONOUNCEMENT: 24.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

Cr1.A.No.785/2013

Jugunu @ Chandrakant

... Appellant

Vs

The Inspector of Police
C2, Elephant Gate Police Station
Chennai-79

... Respondent

Prayer:- This Criminal Appeal is filed, against the judgement, dated 21.10.2013, made in SC.No.110/2009, by the learned Principal Sessions Judge, Chennai.

For Appellant : Mr.Ramesh Kumar Chopra
For Respondent : Mr.V.M.R.Rajendran, APP

JUDGEMENT

(Judgement of the Court was made by ARUNA JAGADEESAN, J.)

This Criminal Appeal is filed against the judgement, dated 21.10.2013, made in SC.No.110/2009, by the learned Sessions Judge, Chennai, thereby convicting and sentencing the Appellant/accused for the offence under Section 302 of IPC to undergo life imprisonment and to pay a fine of Rs.5000/-, in default to undergo one year Rigorous Imprisonment and under Section 364 of IPC to undergo life imprisonment and to pay a fine of Rs.5000/-, in default to undergo one year Rigorous Imprisonment and ordering the sentences to run concurrently.

2. The case of the Prosecution is as follows:-

a. PW.1 Shaila's husband is PW.6 Anand. They got one child, namely, Monic. The Appellant/accused's elder brother PW.18 Mahendra Kumar married PW.6's aunty Chanda PW.17. On 25.09.2008 at 7.00 p.m. the accused came to the residence of PW.1, at Door No.23, Palliyappan Street, Sowcarpet, Chennai and played with her son Monic, who was 2 ½ years old child. PW.2 Rasheela and PW.3 Sapna, who are the mother-in-laws of PW.1, were also there. When the

accused asked PW.1 to give Rs.50/- for his expenses, she refused. Later, he took her son by saying that he will play with her child and he will return shortly. Since he did not return after 15 minutes, she telephoned to PW.17 Chandha and got the accused's mobile number and called and asked him to return home with child. He replied that he is in a bag shop and he will return within half an hour. But, he did not return. Again when she called him, he switched off his mobile. At about 8 or 8.10 p.m. PW.17 called PW.1 Shaila and told that the accused called her over phone and told that he will take Monic to Delhi and going to murder him. She informed the same to her father PW.7 Prakash Chand Jain, father-in-laws PW.4 Chandammal and PW.5 Lalith and other relatives. Immediately, PW.1 along with her relatives went to the Central Railway Station and searched in all the trains. Later, they went to C2 Elephant Gate Police Station and PW.1 gave statement Ex.P1. Later, they went to PW.19 Narendra Kumar's house. He is the husband of PW.20 Madhubala, who is the relative of the accused. At about 11.00 p.m. PW.1 got information that the accused called PW.19 Narendra Kumar over phone and told that in between Ambattur to Thirumullaivoil Railway line, he murdered Monic. At that time, PW.1 asked PW.19 to switch on the mobile phone in speaker mode and she talked with the accused that if he wants money or whatever he wants, she will give and leave her child. He replied that he could not get the child since he already murdered him. Later, she along with her parents and other relatives, went to Thirumullaivoil Railway Station and searched her child. At about 1.00 a.m. 250 metre distance from the said Station, in the North side railway track, he saw her child with broken head. She identified the dead body of her child to Police. She gave further statement. She also identified MO.1 Banian and Mo.2 Jatti of the child to the Police.

b. PW.43 Gunasekaran, Inspector of Police registered a case and prepared printed First Information Report Ex.P18. Later, on 25.9.2008 at 10.00 p.m. he went to PW.1's house, he prepared Ex.P4 observation mahazar and also Ex.P19 rough sketch in the presence of the witnesses and the recorded their statements. Then, PW.43 rushed to the scene of occurrence with PW.1 and found the child with broken head. He altered the Section 364 of IPC as 302 of IPC and Ex.P20 is the alteration report and prepared observation mahazar Ex.P2 and Ex.P21 rough sketch in the presence of the witnesses and seized materials objects under seizure mahazar. In the presence of the Panchayathars, he prepared Ex.P22 inquest report. On the same day at 4.15 a.m. he sent the dead body to the Government Hospital for post mortem through PW.37 head constable along with the requisition for conducting autopsy.

c. PW.40 Dr.Vedhanayagam conducted the autopsy and opined that the child would appear to have died of shock and haemorrhage due to multiple injuries sustained and gave Ex.P15 post mortem report. Then on 26.9.2008, PW.43 examined the witnesses and recorded their statements. The accused was arrested by L.T.Marg Police at Mumbai and brought to chennai on 30.10.2008. After

recording the confession statement from the accused, he was sent to judicial custody. Then PW.43 examined various witnesses and recorded and their statements. After completing investigation and receiving chemical reports, filed the charge sheet against the accused under Sections 364 and 302 of IPC.

3. The case was taken on file in SC.No.110/2009 by the learned Sessions Judge, Chennai and necessary charges were framed. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.43 and also marked Exs.P1 to P22 and Mos.1 to 28. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC, as to the incriminating circumstances found in the evidence of the prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case. On the side of the defence, DW.1 was examined and Ex.D1 to D5 were marked. The court below, after hearing the arguments advanced on either side and looking into the materials available on record, found the accused/appellant guilty and awarded punishments as referred to above, which is challenged in this Criminal Appeal.

4. We have given our careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record, including the statements of the witnesses produced by the Prosecution and the defence and also perused the impugned judgement of conviction.

5. Mr.Ramesh Kumar Chopra, the learned counsel for the Appellant vehemently contended that the judgement and order of conviction, passed by the Trial Court is contrary to the evidence on record and well settled principles, in respect of circumstantial evidence and medical evidence. Highlighting his argument, the learned counsel contended that the entire case of the Prosecution revolves around the circumstantial evidence and that the Prosecution is required to establish each and every link in the chain of circumstantial evidence and unless the same is established, the Prosecution cannot be said to be successful, in establishing the guilt of the accused. The Appellant contended that one of the main evidence, relied upon by the Prosecution, namely, judicial confession, made by the Appellant to the relatives of the deceased child, namely, PW.5, PW.11, PW.12 and PW.13 through phone, cannot be relied upon, as there is no material to indicate that he confessed to have caused the fatal injuries to the deceased child. The learned counsel contended that there is absolutely no material to prove motive on the part of the accused to commit the crime in question and the statement of the Doctor PW.40, who conducted post mortem, would clearly suggest that the possibility of the deceased child, getting drawn near the moving train running into high speed getting hurt, thus probabalising the defence version that the deceased sustained injury accidentally. He

vehemently contended that the case of the accidental death has been converted into culpable homicide by the investigating agency, which is revealed from the alteration of date and time in the First Information Report. It is submitted that the Trial Court has not appreciated the evidence of the Prosecution witnesses and recorded conviction, which cannot be sustained.

6. Per contra, Mr.V.M.R.Rajendran, the learned Additional Public Prosecutor for the State, while supporting the judgement and order of conviction, refuted the aforesaid argument of the learned counsel for the Appellant and submitted that the judgement and order of conviction passed by the Trial Court is well founded. The learned counsel for the State has contended that the materials placed on record would clearly prove that the accused was last seen with the deceased child, just prior to the incident and there is absolutely no explanation on the part of the accused as to why he had taken the child to fairly a remote place i.e. between the two tracks of the railway lines and the irresistible conclusion is that it is the accused who had done the deceased to death. He also contended that the explanation given by the accused in his statement recorded under Section 313 of Cr.PC that due to a heavy wind, the child was dragged to the track and was hit by a moving train, is highly unbelievable and rightly disbelieved by the Trial Court. He, therefore, contended that the findings recorded by the Trial Court holding the Appellant guilty of the offence under Section 302 of IPC are sound and proper and warrants no interference in the appeal.

7. The Prosecution case entirely rested on the circumstantial evidence. Apart from the various circumstances pressed into service by the Prosecution, which were held proved by the court below, it mainly relied upon the vital circumstances, namely, (1) deceased last seen alive in the company of the accused, (2) extra judicial confession made by the accused to the relatives PW.19, PW.21 and PW.7 through cell phone, which is also corroborated by PW.5, PW.11, PW.12 and PW.13, which led to the recovery of body of the deceased from the railway tracks in between Thirumullaivoil and Ambattur, (3) abscondence of the accused after the incident, who has stayed in a lodge and concealed his identity by tonsuring his head and then wandering in Mumbai till he was apprehended by the police and (4) conduct of the accused after the incident.

8. We would examine the material on record quo each of the aforesaid circumstances.

9. Deceased last seen alive in the company of the accused:-

The vital circumstance is that the deceased was last seen alive in the company of the accused. PW.1, the mother of the

deceased has deposed that the accused was playing with the deceased child and he demanded Rs.50/- for his expenses, but PW.1 did not give the money to him. Thereafter, the accused took the child with him for sight seeing and told PW.1 that he would leave him back. She had further deposed that the same was witnessed by her mother-in-law Rasheela (PW.2) and her mother-in-law (PW.3) Sapna. PW.2 and PW.3 have corroborated the aforesaid evidence of PW.1.

10. The accused taking the child from the house of PW.1 is not denied by the accused and in fact, it is admitted by the accused even in the course of evidence, more particularly during the cross examination of the Prosecution witnesses and in the statement recorded under Section 313 of Cr.PC as well. The accused did not return back with the child, but informed over phone to PW.19 Narendrakumar that he had killed the child and left the body in the railway track in between Ambattur and Tirumullaivoil. He had also informed the above said fact to PW.21 though did not support the Prosecution in his Chief, but admitted it in his cross examination, when he was confronted with the said statement made to the Police, at the time of investigation.

11. The evidence of PW.4 and PW.5 is also to the same effect and it clearly corroborates the evidence of PW.1. There is absolutely no reason to discard the above evidence of PW.1 to PW.5 that on the fateful night, the accused took the deceased child along with him to go around the places. Their evidence, on this aspect, would receive substantial support from the statement made by PW.1 during inquest. The accused was not to be seen in the vicinity, till he informed PW.19 and PW.21 over phone that he has killed and placed the body in the two tracks in between Ambattur and Tirumullaivoil railway tracks. On the basis of the aforesaid information gave by the accused, the body of the deceased child was found on the place of incident with multiple injuries on the next morning and that further the accused was found missing from that place. Thus, there is a formidable incriminating circumstance against the Appellant. The deceased was last seen alive only in the company of the accused. The accused was, therefore, expected to give a reasonable explanation as to why he had taken the child to the railway track and how the deceased had died. There is no material to indicate that the accused informed to those witnesses that the deceased died accidentally. Excepting the suggestion made to the witnesses by the defence counsel, there is no such explanation for this from the accused.

12. The evidence of post mortem Doctor shows that there was severe head injury, due to which the brain part had flown away from his head. According to the Doctor, if it was an accidental death, due to the hit against a moving train, then the body would have been cut into several pieces. Therefore, it was a definite case of homicide. It would be of some relevance to note here

itself that on that relevant night, except the deceased and the accused, no other person was present in the said place. As we noted earlier in his 313 Cr.PC statement, the accused has stated that he was sitting in between the two train tracks of the railway lines and the deceased child was sleeping near him. Taking into consideration cumulatively the evidence of PW.1 to PW.3 and also the admission of the accused made both by suggesting to the witnesses and also in his 313 Cr.PC statement, we hold that it has been proved that the deceased was seen alive in the company of the accused.

13. Extra judicial confession made by the Appellant:-

Admittedly, there is no direct evidence of the eye witnesses. The case of the Prosecution is primarily based upon the extra judicial confession of the Appellant coupled with the discovery of the dead body of the deceased child. The learned counsel for the Appellant submitted that the extra judicial confession allegedly made by the Appellant has not been proved by the Prosecution beyond all reasonable doubts. It is contended that as the main witness PW.21 has turned hostile, the conviction based upon the uncorroborated testimony of PW.19, the father of PW.21 is not justified.

14. It is settled position of law that extra judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of crime alleged. Despite inherent weakness of extra judicial confession, as an item of evidence, it cannot be ignored, when shows that such confession was made to a person, who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. The Honourable Supreme Court has held in an earlier judgement reported in AIR-1975-SC-322 (Rai Shiv Bahadur Singh Vs. State of MP) and reiterated again in Maghar Singh Vs. State of Punjab (AIR-1975-SC-1320) that the evidence in the form of extra judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believe the witnesses before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence. In Narayan Singh Vs. State of MP (AIR-1985-SC-1678), the Honourable Supreme Court had cautioned that it is not open to the Court trying the criminal case to start with presumption that extra judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such confession.

15. In the instant case, the extra judicial confession made by the Appellant has been sought to be proved by the testimony of PW.19 and PW.21, relatives of PW.1. The aforesaid witnesses are

related to the Appellant. The confession has been made instantaneously immediately after the occurrence and is not alleged to have been procured under any undue influence, coercion or pressure. PW.1 mother of the deceased PW.4, mother in law of PW.1, PW.7 father of PW.1 and PW.14 close relative of PW.1 were all present when the Appellant made the confession through the cell phone of PW.19 and PW.21. It is not in dispute that the accused had a mobile phone though not in his name and the mobile number is 9840859114 which is also mentioned in the First Information Report lodged by PW.1 even before such confession was made. The call particulars relating to the accused's phone is marked as Ex.P5. The mobile number of PW.19 Narendrakumar is 9444752375. It is seen from Ex.P5 call particulars, the accused had contacted PW.21 at 11.08 p.m. on 25.9.2008 and spoken to him for 141 seconds. The cell phone number of PW.21 Nithesh is 9402233433. The accused had spoken to him on the same date i.e. on 25.9.2008 twice. Though PW.21 turned hostile, but the call details Ex.P5 coupled with the oral testimony of PW.1, PW.4, PW.7 and PW.14 would clearly show that the accused had contacted PW.19 and PW.21 on 25.9.2008 and spoken to them. PW.5, PW.11, PW.12 and PW.13 have deposed that they had come to know about the confession made by the Appellant to PW.19 and PW.21 through his cell phone. In fact, PW.1, PW.4, PW.7 and PW.14 were present at the time when the accused had spoken to PW.19 and the speaker was switched on so as to enable the aforesaid witnesses to hear the conversation between PW.19 and the Appellant.

16. It is true that PW.21 has been declared hostile, but in his cross examination, he has admitted that the accused confessed to him to have murdered the deceased child in between the two tracks of Ambattur-Tirumullaivoyal railway lines. As noted earlier, the body of the deceased had been found in between the two tracks pursuant to the confession made by the accused. We are not impressed by the argument that the accused had informed the aforesaid witnesses only about the accidental death of the deceased child. The time, the manner and the attending circumstances clearly prove that the Appellant had made a voluntary extra judicial confession admitting the crime. Therefore, we are satisfied that there was sufficient evidence, even in the absence of testimony of PW.21, to hold that the Appellant had made a voluntary extra judicial confession and such a statement was made, by him instantaneously immediately after the occurrence to witnesses who are independent and reliable.

17. Abscondence of accused after the incident:-

We have the evidence of PW.35, an auto driver, who has deposed that the Appellant with a child travelled in his auto on 25.9.2008 at about 7.10 p.m. and paid Rs.30/- as auto fare. Then, we have the evidence of PW.10 Manager of the Lodge, PW.9 employee of a saloon, namely, Asia Saloon to the effect that the Appellant had come to the lodge and stayed in the lodge on 26.9.2008. PW.9

was running a saloon near the said lodge and tonsured his head in the said saloon. PW.8 owner of Karthick Jewellers at Trichy had stated that the accused sold a gold chain and received a sum of Rs.10,800/- on 26.9.2008. It has to be pointed out that the accused had stayed in the said lodge after the occurrence and after changing his identity by tonsuring his head, had gone to Mumbai and wandered there for about a month. His abscondence on the part of the accused from the place of occurrence immediately after confessing the guilt to PW.19 and PW.21 points out towards his guilty conduct of the accused. Conduct of the accused is also important. The evidence placed on record discloses that the accused was found roaming in various places in Mumbai and was apprehended by the Mumbai City Police on 28.10.2008 and handed over custody to Chennai Police on a warrant. He has not made any attempt to report the incident to the Police. No material has been produced to substantiate his version that it was an rail accident. When once it is established that the accused had taken away the deceased child with him and was at the place of occurrence, when there is no explanation as to how the child got into the railway track, then it lends assurance to the Prosecution case. We are not impressed upon the argument that the deceased child sustained injuries hitting against a moving train accidentally.

18. The learned counsel for the Appellant made a faint attempt, by pointing out to the oral testimony of the Doctor who conducted post mortem that it is an accidental death. PW.40 Dr.Vedhanayagam, who conducted autopsy on the body of the deceased child, had clearly stated that the deceased died of multiple injuries sustained by him. He has further stated that if the deceased had been hit by a fast moving train, then the body would have been cut into pieces. The defence suggesting that the injuries could have been caused when the deceased child was hit by a moving train, is not supported by any evidence. Hence, it is an idle exercise to contend that it is an accidental death. We are, therefore, not persuaded with the argument put forward by the learned counsel for the Appellant.

19. All these circumstances referred to above relied upon by the Prosecution in our considered view, after detailed reconsideration of the entire material, conclusively establishes the guilt of the accused. All the circumstances, specific and of a clinching nature, irresistibly lead to the only conclusion that it was the Appellant alone who could be guilty of the homicidal death of the deceased child Monic. Even on reappreciation of Prosecution evidence, we see no reasons to differ from the findings arrived at by the Trial Court convicting the accused for the offences under Section 364 and 302 of IPC.

20. For the reasons stated above, we dismiss the appeal, as devoid of merits and affirm the conviction and sentence passed by the Trial Court.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Srcm

To:

1. The Principal Sessions Judge, Chennai
2. The Inspector of Police,
C2, Elephant Gate Police Station,
Chennai-79
3. The Public Prosecutor,
High Court, Madras
4. The VIII Metropolitan Magistrate,
George Town, Chennai.
5. The -do- chief Metropolitan Magistrate,
Egmore, Chennai
6. The Superintendent,
Central Jail, Puzhal,
Chennai.
7. The Director General of Police,
Mylapore, Chennai - 4
8. The District Collector,
Chennai.

+1cc to Mr.Ramesh Kumar Chopra, Advocate, S.R.No.17131

Cr1.A.No.785/2013

MG(CO)
CA(08/04/2015)